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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 248th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 May 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.248/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Senegal (continued) (CAT/C/17/Add.14)

1. At the invitation of the Chairman, the members of the delegation of Senegal took places at the Committee table.

2. Mr. NDIAYE (Senegal), replying to the questions of the members of the Committee, said that the Constitutional Council, of which he was Chairman, had been established in 1992 as one of the three courts that had replaced the Supreme Court (the other two being the Council of State and the Court of Cassation). Its five members were appointed by presidential decree for a non-renewable six-year term. They were drawn from the corps of superior judges, senior members of the legal profession and university law professors with at least 25 years' experience.

3. While the Court of Appeal was responsible for the supervision of elections, the Council heard disputes regarding the constitutionality of presidential and parliamentary elections. Its role as a constitutional watchdog consisted in ensuring that legislation enacted by the National Assembly was constitutionally sound. Referral to the Council in that connection could be made by the President of the Republic or by one tenth of the members of the Assembly. No act referred to the Council could be promulgated until an opinion on its constitutionality had been delivered.

4. The Council also had special jurisdiction in respect of the plea of unconstitutionality (exception d'inconstitutionnalité). Any party to a dispute before the Court of Cassation or the Council of State could challenge the constitutionality of the legislation being applied in the proceedings and have it referred to the Constitutional Council. The Council also fulfilled a subsidiary function as a court of conflicts, in the event that conflicts of jurisdiction arose between the Council of State and the Court of Cassation or between the executive and the legislature. No such cases had yet been referred to it.

5. The Senegalese Human Rights Committee had been set up in the 1970s, long before the United Nations had recommended the establishment of such bodies. Its responsibilities had been gradually extended so that it currently operated both as an adviser to the executive and as a mediator between the public authorities and the people. Its effectiveness as a defender and promoter of human rights had been enhanced through careful study and implementation of the recommendations of a series of regional seminars on national human rights committees convened by the United Nations. Training courses had been organized for the gendarmerie and the police force and a university-level Institute for Human Rights and Peace had been established. Grass-roots propagation of human rights ideals was undertaken by non-governmental organizations (NGOs) and an as yet limited number of schools.

6. The Council of State advised the Government on the legality of laws and regulations through a Consultative Assembly. It also had competence in matters of excess of jurisdiction and in administrative review proceedings. It was composed of two sections. Both the Council of State and the Court of Cassation, which was composed of three chambers, were expected to become increasingly active as the large amount of litigation in progress at lower levels of the judicial system worked its way up to the superior courts.

7. The ombudsman (Médiateur de la République) was appointed by presidential decree. His main role consisted in establishing a channel of communication between the authorities and individual citizens, so that disputes could be settled equitably without recourse to legal proceedings. Of the four to five thousand cases a year referred to the ombudsman, between one and two thousand were settled. He could therefore play an important role on behalf of victims of torture.

8. Mr. DIOP (Senegal) said that the monthly interministerial meeting on questions of human rights and torture had been instituted by the President of the Republic. The Interministerial Committee was composed of a member of the President's Office, the Legal and Diplomatic Advisers to the President, the Legal Adviser to the Prime Minister, representatives of the Ministries of Justice, the Armed Forces, the Interior, Health and the Environment, and a representative of the Human Rights Committee.

9. Technical questions were referred to a specialized subcommittee that reported to the plenary. The Interministerial Committee itself reported to the President of the Republic. The Senegalese delegation to the Committee against Torture had been enlarged on the basis of a recommendation by the Interministerial Committee and would report thereto on its return to Senegal.

10. There was ongoing cooperation between the Senegalese authorities and both governmental and non-governmental bodies operating in the field of human rights. They had recently responded to a report by the Department of State of the United States of America, giving detailed replies to all the questions asked. Ongoing contacts were maintained with Senegalese NGOs, which were provided with exhaustive information on relevant issues. As for international NGOs, his Government had recently received the report of Amnesty International, which was currently being studied. The Interministerial Committee would reply to all the points raised and the Committee against Torture would, if it so desired, be provided with a copy of the reply.

11. Mrs. DIOP (Senegal), replying to a question by Mr. Sørensen, explained that the declaration under article 22 of the Convention had been made, but not according to the procedure set out in paragraph 8. That situation would be rectified on her return to Senegal.

12. Training programmes were being extended to all medical personnel with the assistance of NGOs. To implement the United Nations resolution on the Decade for Human Rights Education, an extensive programme of instruction had been introduced. As doctors were, however, a key group in that they had to attest to instances of torture, priority was being given to their training. The third periodic report would show that action had been taken on the Committee's recommendations.

13. Before the current economic crisis, Senegal had always contributed to United Nations funds, especially those for the protection and promotion of human rights. Her delegation would therefore recommend to its Government that Senegal make a donation to the Voluntary Fund for Victims of Torture.

14. Mr. FOFANA (Senegal), replying to a question by Mrs. Iliopoulos-Strangas said that the independence of the judiciary was guaranteed by the Constitution, which likewise stated that judges had to comply with the law in carrying out their duties. As far as their careers were concerned, judges were appointed by presidential decree on the recommendation of the Judicial Service Commission. The latter was also the disciplinary body of the judiciary, in which capacity it was presided over by the head of the appropriate division.

15. He then explained that, as stated in the report (CAT/C/17/Add.14, para. 28) exceptional circumstances could never be pleaded as justification for torture and outlined the relevant provisions regulating emergency powers under article 47 of the Constitution, namely, in states of emergency and siege.

16. Turning to the protection of aliens present in Senegalese territory without a lawful residence permit, he pointed out that the report had described the procedure for granting asylum and protection to persons in danger of torture or persecution and said that it covered such aliens.

17. Legal aid was governed by colonial legislation dating from 1911, which provided for the establishment of a Commission empowered to decide whether to grant such aid to persons appearing before a regional criminal court.

18. The State was liable to pay compensation to persons who had been tortured by members of the police force if the offender was not able to do so.

19. With regard to the section of the report dealing with article 315 of the Penal Code (para. 28, subpara. (d)), he made it quite clear that the provision did not apply to persons guilty of torture.

20. The term "special chamber" (para. 41) had been misunderstood. It referred not to a special military court but to an ordinary court in which the assessors, and the assessors only, were military personnel with special technical knowledge.

21. Replying to a question by Mr. Zupančič concerning evidence (para. 108), he said that the purpose of an amendment to the Code of Criminal Procedure was to punish any member of the judicial police who extorted a confession by torture. If a court concluded that any of the conditions laid down in article 57 of the Code of Criminal Procedure had not been met, the confession became null and void.

22. Mr. NDIAYE (Senegal) said he would like to clarify some aspects of police custody. Although torture was not explicitly defined in Senegal, the Penal Code made it possible to punish all forms of torture. Nevertheless, the President of the Republic had ordered the Minister of Justice to submit a bill containing a definition of torture, consonant with that set forth in

the Convention, to the next session of Parliament. The Penal Code regulated police custody very carefully, including penalties or disciplinary measures, in its articles 55 et seq.

23. In that context, he emphasized that secret detention was impossible in Senegal both de jure and de facto. If custody extended beyond 48 hours, the detainee had to be informed of the reasons therefor and offered the opportunity of a medical examination by a doctor of his choice. Unless the police report recorded that such action had been taken, the report became null and void. The Government Prosecutor could have a detainee examined by a doctor of his choice at any moment during detention and, in fact, if anyone requested such an examination on the detainee's behalf, the Government Prosecutor was obliged to agree to the request.

24. The police report had to record the exact time and date of the commencement of custody, the reasons therefor, the duration of questioning and rest periods and the exact time and date when custody ended. Those details had to be countersigned by the detainee. If he refused to do so, that too had to be recorded.

25. The provisions of the Penal Code had been clarified by Decree No. 74/571 of 1974 on the Gendarmerie. He quoted several provisions of the Decree and the related articles of the Penal Code.

26. Some provisions governing disciplinary measures in the armed forces (Decree No. 90/1159 of 12 October 1990, for example) made specific reference to the Convention.

27. Laws and regulations were carefully supervised by the authorities, particularly the Minister of Justice, who had issued a number of service instructions dealing with police custody and the independence of the courts.

28. He reiterated that secret detention was impossible, since the detainee's relatives and counsel could refer the matter to the Government Prosecutor who was responsible for supervising detention and police custody. In addition, no one could be held without a proper arrest warrant. He outlined the contents of article 108 of the Code of Criminal Procedure which regulated the right to communicate.

29. In view of the numerous allegations concerning torture, the Head of Government had instructed his ministers to adopt a series of measures to consolidate the rule of law and strengthen human rights, as a result of which the Minister of Justice had already taken steps to prevent impunity, although articles 59, 113 to 117, 164 et seq., 290 et seq. and 110 of the Code of Criminal Procedure effectively provided for punishment and penalties in the event of torture or unlawful behaviour, as did article 111 of the Penal Code.

30. Articles 1 and 116 of the Code of Criminal Procedure enabled both the Government Prosecutor and private individuals to set proceedings in motion, which was a further important means of safeguarding a victim's rights. Several articles of the Code of Criminal Procedure authorized the Government Prosecutor to investigate and deal with all breaches of the Code. Article 32

on the termination of proceedings was yet another guarantee, as it enabled the complainant to claim damages and thus to have a case reopened under article 76.

31. Turning to the specific cases that had been mentioned, he said that a number of allegations had been made concerning events of a highly political nature in the Dakar region. Unfortunately, more attention had been paid to media comment on those events than to the legal considerations involved: in at least two of the cases, all available domestic remedies had not yet been exhausted.

32. One of the cases was that of Mr. Mody Sy. Article 56 of the Code of Criminal Procedure required that any person held in custody had to be advised of his rights and examined by a doctor, and that a report on that examination had to be made. In the case of Mr. Mody Sy, all those requirements had been met and the medical report had not included any mention of violence.

33. When brought before the examining magistrate, Mr. Mody Sy had once again been examined by a doctor - at the request of his counsel - and a second report had been made: that report had been made available to the defence, which had not commented on it. The examining magistrate, after reading the two reports, had decided to call for a third examination, which Mr. Mody Sy had refused. Subsequently, following a complaint by Mr. Mody Sy's lawyers, an investigation had been carried out, but no evidence had been found that torture had been committed. He was glad to say that there was a happy ending to the story in that Mr. Mody Sy was at liberty and was carrying out his duties as a deputy of the National Assembly.

34. As for the case of Mr. Lamine Samb, the Committee would already be aware that Mr. Samb had been detained following the events of 16 February 1994 in which a number of violent, not to say barbarous, acts had been committed. The police had taken immediate action and had arrested several persons carrying weapons at the scene, who had later been interrogated. That interrogation had led to the arrest of Mr. Samb on 17 February.

35. Mr. Samb had made a statement admitting that he had witnessed acts of violence, in which those causing the disturbance had been involved. Unfortunately, in the course of his transfer to another police station he had become ill, and had been taken to hospital, where he had subsequently died.

36. The Government Prosecutor had refused to sign a death certificate and had asked for an autopsy. However, the autopsy report gave no indication that Mr. Samb's death had been the result of violence or ill-treatment. The family had been informed of the conclusions of the report, but had made no comment to date.

37. In the case of Mr. Dejou, who had died in prison in February 1994, the Government Prosecutor had agreed to open an investigation into the cause of death, even though there had been no autopsy report. Nevertheless, the dead man's son had filed a complaint on the basis of article 76 of the Penal Code, and a second investigation had been ordered, which had led to the arrest of three men. That investigation was still in progress.

38. A further case, concerning a child who had been seriously burned on police premises, had been raised by Amnesty International: in fact, it came within the jurisdiction of the Ministry of the Armed Forces. In that connection, he stressed that the Code of Military Justice did not dispense a different brand of justice from that of the Penal Code. Sentences were handed down by professional judges, assisted by military assessors, and offences under ordinary law as well as military offences were examined. Thus, members of the military could be charged by the Government Prosecutor with offences under the Penal Code and, in such cases, an order for arrest had to be issued. The case in question was being investigated.

39. In a further case dating from August 1994 concerning an allegation of torture involving the military police, an order for the arrest of the officers concerned had been issued by the Ministry of the Armed Forces, and acted upon promptly. The investigation was continuing.

40. He cited the more recent example of a complaint against members of the police made on 19 April 1996, which by 22 April had led to the arrest of the persons concerned and the opening of an investigation. That was proof that no human rights violations, and in particular no act of torture, could take place in Senegal without prompt action being taken to identify those responsible.

41. He had been impressed by the Committee's understanding of the difficulties his Government was facing in Casamance. He was unable to say that no human rights violations had ever been committed by Senegal's security forces, and indeed there were few countries in which such a statement could be made. The cause of the problem was that the region was claiming the right to self-determination, and had been waging a campaign of violence since 1993. His Government considered that a climate of peace was an essential precondition for respect for human rights, and had appealed to the militants to lay down their arms, an appeal which had been rejected.

42. Although the Government was always ready to negotiate, and had fixed 8 April 1996 as the date for a cease-fire, further murders and acts of violence had occurred since. That situation should be borne in mind when considering human rights issues in Senegal.

43. The CHAIRMAN, on behalf of the Committee, thanked the delegation of Senegal for its replies to the questions asked.

44. The members of the delegation of Senegal withdrew.

The public part of the meeting rose at 4.50 p.m.